IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1032 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PALITANA SUGAR MILLS PRIVATE LIMITED

Versus

COLLECTOR

Appearance:
Mr.DR Dhanuka, Sr.Counsel with
MR PRASHANT G DESAI for Petitioners
GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 24/11/2000

CAV JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

In the course of hearing of Special Civil Application No. 10108/94 filed by the said petitioner Palitana Sugar Mills Pvt.Ltd., the pendency of the present petition with regard to the right and title to the land in question came to our notice. Therefore, instead of listing it for hearing before any Single Judge, on obtaining orders on the administrative side of one of us (D.M.Dharmadhikari, CJ), this petition has been heard by us with Special Civil Application No. 10108 of 1994 and other connected group matters in which we are separately delivering a common judgement.

2. By the present petition (Special Civil Application No. 1032/96), the petitioner seeks quashing of impugned show cause notice dated 25.1.1996 (Annexure O) issued by the Collector, Bhavnagar in purported exercise of powers of revision under Section 211 of the Bombay Land Revenue Code as applicable to the State of Gujarat. By the impugned show cause notice, the Collector, Bhavnagar proposed to revise the order dated 10.7.1992 passed in revision by the Deputy Collector under Rule 108(6) of the Gujarat Land Revenue Rules, 1972, whereby mutation entry (described as right title entry no.1950) was confirmed recognising the ownership of the petitioner Palitana Sugar Mills Pvt.Ltd under its purchase by registered sale deed from the erstwhile ruler of the Bhavnagar State, of lands Survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 of Village Vadva of Bhavnagar.

3. For understanding the challenge to the impugned show cause notice for initiating revision proceedings by the Collector, it is necessary to trace the chequered history with relevant facts leading to the filing of the present petition and Special Civil Application NO. 10108/94, which we are deciding with connected group petition by a common judgement delivered separately.

4. Dr.Virbhadrasinhji Krishnakumarsinhji Gohil of Neelambaug Palace, Bhavnagar was alleged to the owner and occupant of the lands admeasuring 37,61,658 sq.mtrs of S.No. 469/1, 470/1, 471/2 paiki, 471/3 and 472 of Village Vadva Taluka, District Bhavnagar. The aggregate land admeasures about 930 acres and 4 gunthas. The above named Ex-ruler of Bhavnagar State executed a registered sale deed in respect of the aforesaid lands in favour of the petitioner company on 30.3.1971 for a sum of Rs.464000/-. The Ex-Ruler had made an application under Section 8 of the Gujarat Agricultural Land Ceiling Act (hereinafter referred to as "Agricultural Land Ceiling Act") on 19th June, 1976 for a declaration under

sub-clause 2 of Section 8 of the Agricultural Land Ceiling Act. That the said transfer by the Ex-ruler and others in favour of the petitioner company was said to be bonafide and not with a view to evade the provisions of Agricultural Land Ceiling Act. The Deputy Collector, Bhavnagar in Ceiling Case No. 76-77 by order dated 9.11.1979 held that the lands were within the limits of City of Bhavnagar and part of `urban agglomeration' as defined in Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "ULC Act"), the provisions of Agricultural Land Ceiling Act were not applicable to the land. This order was passed by the Deputy Collector on the opinion sent by the State Government in its Legal Department by its letter dated 9.11.1979. The order of the Deputy Collector contained some error with regard to mentions of the area in the survey numbers, therefore a corrected order was passed on 20.11.1979.

5. The petitioner company thereafter made an application proposing a scheme for putting up construction for weaker sections of the society on the said lands under Section 21 of the U.L.C. Act. The scheme was approved by the Specified Authority on 17.1.79 and 3.12.79. The Competent Authority after obtaining approval of the State Government and seeking directions from it passed an order dated 6.12.79 sanctioning the scheme.

6. Out of the total area of 3761658 sq.mtrs of land, an area of 311508 sq.mtrs was directed to be reserved for Bhavnagar University and 2232 sq.mtrs was reserved for acquisition for Civil Aviation. These were the terms of the order passed by the Competent Authority while sanctioning the scheme proposed by the petitioner for constructing houses for weaker sections. Thus, the petitioner was permitted to hold land admeasuring 3447918 sq.mtrs for the purpose of making construction of dwelling units for weaker sections of the society. Even out of the aforesaid land under the scheme, an option was given to (1) Bhavnagar Municipality, (2) Housing Board and (3) Slum Clearance Board to claim lands to the extent of about 11,00,000 sq.mtrs for their different purposes. The Housing Board declined the offer. The Slum Clearance Board at a later stage gave up its claim. The Bhavnagar Municipality challenged the action and the scheme by Special Civil Application No. 941 of 1980. An interim injunction restraining the petitioner company from putting up construction was earlier passed but subsequently the Learned Judge, on the stand taken by the Additional Collector and Deputy Collector, Bhavnagar,

vacated the interim injunction and permitted the petitioner company to put up constructions on the said lands at its own risk.

7. On an apprehension that the State Government might review the order of the Competent Authority under the U.L.C. Act, the petitioner in the year 1980 made an application to the Prant Officer, Bhavnagar Prant praying grant of permission for temporary non-agricultural use of part of land in S.No. 470/1 of Village Vadva. On the instructions of the Area Development Authority, Bhavnagar, before constructing the sample tenements on a portion of land of 720 sq.mtrs, out of S.470/1, the petitioner approached the Deputy Collector, who by order dated 23.1.80 granted the N.A. permission. Thereafter, the petitioner again applied for N.A. use permission in respect of portion of land of S.NO. 471/1 & 471/2. The said N.A. use permissions were granted as applied by the petitioner from time to time for different portions of the land, the details of which are not necessary for the purpose of this petition. It is only when the petitioner's application for non-agricultural use was rejected in respect of a portion of an area of the land, the petitioner approached this Court in Special Civil Application NO. 5059/81. In the said case, rule was issued and the petitioner company was permitted to construct on the land at their risk and cost. For hearing the case was listed with Special Civil Application No. 941 of 1980.

8. The State of Gujarat, Revenue Department issued a show cause notice on 17.9.1982 for cancelling the earlier order of the Competent Authority dated 6.12.1979 of sanctioning the scheme proposed by the petitioner company for constructing dwelling units for persons from weaker sections. The petitioner challenged the show cause notice of the Competent Authority in Special Civil Application NO. 4051/82 which was admitted and ad-interim relief was granted staying further proceedings pursuant to the show cause notice. In the meantime, the petitioner approached the State Government by a representation. As a condition for considering its representation, the State Government insisted on withdrawal of all pending petitions. On representation made on behalf of the Government that the lands would be exempted under Section 20 of the U.L.C. Act, the petitioner withdrew all its petitions pending in this Court. On the basis of cabinet decision of the State Government, a notification came to be issued under Section 19 of the Gujarat Town Planning and Urban Development Act, 1976 stating that the development plan

was required to be modified to release land of S.No. 469/1 from reservation for the Bhavnagar University. The State Government however subsequently withdrew the said notification which has led to the filing of Special Civil Application NO. 10108/94 which is being decided separately alongwith other group matters.

9. The petitioner was also advised to institute a Civil Suit in the Court of Civil Judge (S.D.), Bhavnagar Civil Suit No. 152/93 was then filed praying mandatory directions to the State Government to grant exemption under Section 20 of the U.L.C. Act with respect to the lands involved. A interim injunction was passed against the State Government by the Civil Court against which the State Government has not preferred any appeal.

10. After the aforesaid litigation, the Collector, Bhavnagar served on the petitioner a notice dated 7/10-6-83 stating that the sale effected on 2.4.1971 in favour of the petitioner no.1 requires to be declared as illegal being contrary to the Saurashtra Government Circular No. Revenue :2:4:8:3:171 dated 14.9.55. It was alleged that Bid land of erstwhile ruler was illegally converted into agricultural land contrary to the terms of the said circular. The petitioner challenged the notice of the Collector stating that the lands in question were not agricultural lands, they were urban lands covered by the U.L.C. Act, the provisions of which have overriding effect. The justification for such a notice by the Collector for cancellation of sale after 13 years was questioned. As has been stated above, on the orders of the Deputy Collector dated 9.11.1979, the Mamlatdar, Bhavnagar had made mutation entry no.1950 in favour of the petitioner on the basis of the sale deed of the Survey numbers obtained by it.

11. The petitioner was then served with show cause notice dated 22.9.83 issued by the Deputy Collector, Bhavnagar to justify why mutation entry no.1950 with regard to Survey Nos. mentioned therein which was made on the basis of sale deed obtained by the petitioner, be not annulled. The mutation entry was sought to be revised by the Deputy Collector in exercise of powers under the Bombay Land Revenue Code. The petitioner challenged that show cause notice in Special Civil Application No. 4997/83. Rule was issued by the Court at adinterim stage and stay against further proceedings of the show cause notice was passed. The petition however was subsequently withdrawn, as earlier stated, on the representation made to the State Government and awaiting favourable orders by the State Government.

After withdrawal of the above petitions, the petitioner were again served with a show cause notice dated 27.9.91 by the Deputy Collector, Bhavnagar. The petitioner gave a detailed reply to the said notice, thereafter hearing the petitioner and taking into consideration all the previous proceedings of the case, the Deputy Collector passed an order in suo moto revision on 10.7.92 confirming the mutation entry no.1950 made in favour of the petitioner on the basis of sale deed obtained by it from the family members of Ex-Ruler of Bhavnagar State.

12. After such a long course of litigations and conclusion of proceedings by the Deputy Collector - the petitioner has again been served with the impugned show cause notice by the Collector, Bhavnagar dated 25.1.1996 (Annexure O) whereby he proposes to take into revision the order of the Deputy Collector passed on 10.7.92 and again seeks to withdraw the mutation entry no.1950 made in favour of the petitioner.

13. In the impugned show cause notice, the Collector, after taking stock of all previous facts and litigations and the various orders passed by the Revenue Authorities and Authorities under the U.L.C. Act has come to the conclusion which in his words (as translated into English) is as under:- `

> "The right title entry no.132 in the right of titles of Village Vadva of Bhavnagar was certified by the Deputy Collector on 17/18/19-12-1955. In this right title entry in column no.2 the name of His Highness Honourable Maharaja Saheb is shown and in Bid (Pasture) land in column no.2 S.No.469/1, 470/1 paiki is mentioned. In column no.2 against the Government land in column no.3, Survey No. 472, 473 are mentioned. By this right title entry, it is proved that the land of S.No. 472 is government pasture land and of the ownership of the Government and is in possession of the Government, it transpires that the land of A.50-00 of S.No. 472 has been illegally shown to Palitana Sugar Mills Pvt.Ltd.".

14. In the other part of the show cause notice, it is stated that Survey Nos. 472, 469/1, 471/1, 471/2, 471/3 have been sold by Dr.Virbhadrasinhji by registered document no.2 on 2.4.71 to Palitana Sugar Mills Pvt.Ltd in an unauthorised and illegal way and thus the revenue entries and the decisions made on the basis of these documents are liable to be set aside.

The other relevant statements in the show cause notice read as under:-

"As per Section 54 of the Saurashtra Agricultural Tenancy and Agricultural Land Act, 1949 there is a prohibition for transfer of the land to person who is not agriculturist. Even though with this restriction whether Palitana Sugar Mills Pvt.Ltd. is agriculturist or what?"

"The Collector in its decision dated 10.7.1992 has not obtained any evidence/proof in this regard for these provisions that whether you the parties were entitled to purchase the said land and has not produced the related evidence as per the provisions of Section 4 of the Act of 1949, the transfer is illegal."

15. The Collector in his show cause notice has recorded his legal point of view by stating that the provisions of Agricultural Land Ceiling Act are not applicable to the lands but the provisions of Urban Land Ceiling Act are applicable. According to him for the purpose of application of U.L.C. Act, the provisions of Land Revenue Code and the rules framed thereunder would be attracted. It is then stated that the confirmation of revenue mutation entry called title entry no.1950 by the Deputy Collector in his decision dated 10.7.92 is in complete ignorance of relevant facts and the legal position. His order, is therefore, a nullity. Finally, the noticee is called upon as to show cause why the order of the Deputy Collector dated 10.7.92 confirming the mutation entry be not quashed by invoking powers of revision under the Code.

16. Ld. Sr.Counsel, Shri D.R.Dhanuka, appearing for the petitioner assailed the impugned show cause notice issued by the Collector for cancellation of the mutation entry in relation to survey numbers standing in favour of the petitioner company since such a long period and traced for that purpose the entire long course of litigations detailed above. The Learned Counsel has urged several grounds to assail the purposed action uner the impugned show cause notice. The impugned show cause notice was firstly assailed on merits stating that the decision of the Deputy Collector confirming the mutation entry by order dated 10.7.1992 was a decision taken after obtaining the consent of the State Government and was on the basis of the opinion of the Legal Department. The

proposed action of the Collector is perse arbitrary, malafide and without proper application of mind. It is next urged that the land being covered by the U.L.C. Act of 1976 and the development scheme prepared by the petitioner having been sanctioned for construction of houses it is no longer open to the Revenue Authorities to restart the inquiry on the footing that the land was a Bid land and could not have been sold by the Ex-ruler in favour of the petitioner company which was not an agriculturist for it being put to non-agricultural use. It is submitted that Section 42 of the U.L.C. Act gives overriding effect to the U.L.C. Act over all other laws concerning the lands in urban agglomeration.

17. It is also urged that the proposed action of the Revenue Authorities is liable to be restrained on principle of promissory estoppel. On the basis of the orders passed by the State Government and the different Authorities under different enactments, the petitioner has spent as much as Rs.7 crores in developing the land and on part of it dwelling units have already been revised. It is submitted that describing the lands which is within the municipal limits of Bhavnagar as `Bid Lands' is a bogus claim for which there is no evidence or material. Lastly, it is urged that the petitioner deserves to succeed on the short ground that the order of the Deputy Collector confirming the mutation entry in favour of the petitioner on 10.7.92 cannot be revised after such a unreasonably long period by impugned show cause notice issued on 25.1.96. Reliance is placed on State of Gujarat Vs. Patel Raghav Natha reported in 10 GLR 992, Muman Habib Nasir Khanji Vs. State of Gujarat report in 11 GLR 307, Bhagwanji Bhavanji Patel Vs. State of Gujarat reported in 12 GLR 156 and Rajul Cooperative Housing Soc. Ltd. Vs. State of Gujarat & Others reported in 1985 (2) GLR 1187.

18. On behalf of the State, the Learned Counsel tried to support the impugned action of the Collector. A reply affidavit has been filed on behalf of the Collector by the City Mamlatdar in which it has been stated that land S.No. 472 never belonged to Maharaja, Bhavnagar and it could not have been sold to the petitioner. Alternatively, it is submitted that the petitioner was not an agriculturist and in view of the provisions of Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949, the petitioner as non-agriculturist could not have purchased the agricultural land. On behalf of the Collector, it is submitted that since there are several illegalities committed in accepting the sale deed and in making the

mutation entry, the Collector is empowered under Section 211 of the Code read with Rule 108(6) of the Rules to revise the order of the Deputy Collector dated 10.7.92.

19. After hearing the Learned Counsel for the parties and going into the various orders passed by the authorities from time to time under the U.L.C. Act and the Bombay Land Revenue Code, we are of the opinion that the petition deserves to succeed only on the ground that the proposed action of revision of the earlier order of the Deputy Collector with regard to certification of mutation entry has been initiated much after the reasonable period within which the action ought to have been taken under Section 211 of the Code read with Rule 108(6) of the Rules. Section 211 of the Code conferring suo moto powers of revision on higher revenue authorities does not contain any period of limitation for exercise of powers. The provision has however been construed by the Supreme Court and this Court to hold that the reasonable period should be taken to be not beyond one year of the action sought to be revised.

Power of revision similar to Section 211 of the Code is conferred on the Commissioner in relation to the entries in the records of rights. The said power in Rule 108(6) read as under:-

"Rule 108(6) - The Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, any case, it shall appear to the Commissioner that any proceedings so called for or any decision or order made in such proceeding should be modified, annulled or reversed, he may pass such order thereon as he deems fit."

The Supreme Court in the case of Patel Raghav Natha (Supra) 10 GLR 992 had occasion to consider the scope of power conferred by Section 211 of the Bombay Land Revenue Code as applicable to the State of Gujarat. It was observed:-

"It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in

reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

20. The decision of the Supreme Court in the case of Raghava Natha AIR 69 SC 1267 was considered and applied by Division Bench of this Court in the case of Bhagwanji Bhavanji Patel (Supra) 1979 12 GLR 156.. The Division Bench of this Court observed:-

"The State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweet will which may be after seven years as it is sought to be done in this case. If on the other hand any such order was passed against the appellant by the Commissioner, he would have been obliged to move the State Government for reversal thereof, if permissible under Sec. 211 of the Code, within three months or so at any rate he would have to file a suit within one year under Article 14 of the first Schedule of the Indian Limitation Act and cannot wait till the State Government decides anything in that matter. In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected by such act or order passed by the officer of the Government could file a suit and there is no reason why the State Government also should not do so, if it were so affected by any such order such as the order of the Commissioner in the present case by revising the same under Section 211 of the Bombay Land Revenue Code. The maximum period, it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time viz. after about seven years or so, cannot be called at all reasonable. (Para 14)"

In the instant case, even if the entire period from the first mutation entry made in the year 1976 upto the conclusion of all litigations pending in the High Court is excluded, we find that the impugned show cause notice issued on 25.1.1996 to revise the order of the Deputy Collector passed on 10.7.1992 being after a period of almost 3 years and 6 months. It is much beyond a reasonable period of one year as has been held by the Division Bench in the case of Bhagwanji Patel (Supra). As has been narrated above in statements of facts, not

only that the Revenue Entry was confirmed but the State Government had sanctioned construction scheme prepared by the petitioner company for construction of dwelling units for weaker sections of the society. The petitioner on that basis spent crores of rupees for development of the land. It is reported that on part of the land some dwelling units have been constructed. It is too late now for the Collector, Bhavnagar to raise an issue that part of the land was Bid Land and the erstwhile ruler of Bhavnagar could not have sold it to the petitioner company and it is was not covered in the definition of `agriculturist' under the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949. The petitioner's grievances is legitimate that attempt to upset the construction scheme by treating the urban land to be an agricultural land after such a long period, is an action highly belated and unjust.

21. On behalf of the State Government, Ld. Additional Advocate General Shri S.N.Shelat in his reply submits that the Collector has merely issued a show cause notice and the petitioner should be not heard in this petition as it is premature. Petitioner should submit a reply to the show cause notice and await for passing of an order by the Collector.

22. It is true that normally proceedings initiated under the show cause notice are not intercepted by this Court in its discretionary powers under Article 226 of the Constitution of India but there is no absolute rule or prohibition that powers under Article 226 cannot be invoked by a petitioner who is likely to be seriously prejudiced by initiation of a action which is patently illegal. See the following observations of the Supreme Court in Union of India Vs. M/s. Brij Fertilizers Pvt.Ltd. & Others 1993(3) SCC 564, on which reliance has been placed on behalf of the petitioner.

> "Though the High Court should normally not interfere at the stage of show-cause notice, but where, from the facts it is apparent that there was no material available with the department to doubt the statement on behalf of the respondents and their own officers at every point of time had issued the certificate the correctness of which could not be disputed or doubted except by raising unfounded suspicion or drawing on imagination it would be failing to exercise jurisdiction if the Court does not discharge its constitutional obligation of protecting the manufacturers who are in perilous condition as

they are not able to meet their liabilities to pay to financial institutions and various other authorities and are facing proceedings on various counts and have virtually closed their unit."

23. The petitioner having faced such a long course of litigation in various forums including a large number of petitions in this Court, cannot be left to suffer, further proceedings at the instance of Revenue Authorities on a matter of a mutation entry which has long back stood concluded cannot be allowed to go on. Here the power of suo moto revision has not been invoked within a reasonable period. The contention advanced on behalf of the State Gov

this Court should not interfere at the stage of show cause notice and direct the petitioner to face the proceedings and approach the Court only if an adverse order is passed.

24. In the result, this petition is allowed. The impugned show cause notice dated 25.1.1996 (Annexure O) issued by the Collector, Bhavnagar is hereby quashed restraining him from taking any further proceedings pursuant to the said notice. In the circumstances, that the petitioner is litigating in the connected group matters, we make no orders of costs in this petition. Rule is made absolute.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)

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